

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
COUNTY OF NEWPORT**

**APPROVED 8/10/10**

At a meeting of the Town Council of the Town of Tiverton, County and State aforesaid, held at the **Tiverton High School Auditorium, 100 North Brayton Road**, on the 14th day of June 2010 A.D. at 7:00 p.m.

President Bollin opened the meeting with the Pledge of Allegiance to the Flag.

<b>Roll Call:</b>	<b>Donald Bollin-President</b>	<b>Jay Lambert</b>
	<b>JoAnne Arruda-Vice President</b>	<b>Cecil E. Leonard</b>
	<b>Hannibal Costa</b>	<b>Edward Roderick</b>
	<b>Louise Durfee</b>	

Town Administrator, James C. Goncalo, Assistant Town Solicitor Jeanne Scott and Town Solicitor, Andrew M. Teitz were also present.

**TOWN COUNCIL FORMAL ACKNOWLEDGEMENT OF PROMOTION AND ADMINISTRATION  
OF OATH FOR FIRE FIGHTER THIRD CLASS STATUS  
FIRE FIGHTERS TREVOR SHEEHAN AND BRADFORD LYNCH**

Chief Robert Lloyd introduced Fire Fighters Trevor J. Sheehan and Bradford S. Lynch to the Council. The Council acknowledged the promotion to Fire Fighter Third Class and Council President Bollin administered the oath to both Fire Fighters. After the pinning ceremony the Fire Fighter Third Class Trevor J. Sheehan and Fire Fighter Third Class Bradford S. Lynch received a round of applause and a standing ovation from the Council and members of the audience.

**Approval of Consent Agenda:**

All items listed with (CA) are to be considered routine by the Town Council and will be enacted by one motion. There will be no separate discussion of these items unless a member of the Council or a member of the public so requests, in which event the item will be removed from Consent Agenda (CA) consideration and considered in its normal sequence on the agenda.

Council President Bollin read the items on the Consent Agenda.

Councilor Leonard made a motion, seconded by Councilor Arruda to approve the items on the Consent Agenda. Motion passed unanimously.

**CONSENT AGENDA:**

**A-1-Approval of Minutes of Previous Meetings:**

a. Approval of Minutes from Regular Council Meeting May 24, 2010

**A-2-Receipt of Minutes from Various Board and Commissions:**

a. Open Space Commission (2)	c. Harbor Commission (5)	e. Arts Council
b. Planning Board (2)	d. Economic Development Commission	

**A-3-Correspondence:**

a. Resolutions Received

1. Opposing Mandatory Binding Arbitration Legislation from North Kingstown Town Council
2. From Town of Richmond Supporting RI General Assembly Amend RIGL - Permits From DEM for Municipally Owned Bridges, Culverts Repairs
3. Support of Waiving recording Fees for Special Loans to Flood Victims from Town of Richmond
4. Opposing RIDE Version of Funding Formula for Schools by Exeter-West Greenwich Regional School District
5. Received From Peter Moniz Regarding Eagleville Road Erosion and Bulgarmarsh Recreation Area Flooding – Referred to Town Administrator and DPW Director

6. Received From Attorney General Regarding Open Government Summit July 30, 2010
7. Received From City of Newport Regarding Economic Symposium by RI EDC
8. Received From Tiverton School Dept Corrective Action Plan Mandated by RIGL

**A-4-Town Treasurer Budget and Revenue Reports for Distribution**

**A-5-St. Theresa's Church - Requests Public Hearing for Noise Variance on June 28th for Annual Feast with Live Band Performing on July 30 and August 1, 2010**

**A-6-Copy of Response to CRMC Regarding Opposition to Oyster Farm on Nanaquaket Pond Prepared by Councilor Durfee**

**A-7-Town Council President – Approval of Work Shop/ Special Meeting Agenda for June 21**

**A-8- Continue to July 12, 2010 Special Council Meeting with License Extension - Annual Renewal of Countryview Estates LLC License – Continued From January 11, 2010**

**PUBLIC HEARINGS- ADVERTISED**

**Deborah Toulan – Noise Variance at 69 Nanaquaket on July 31<sup>st</sup> for Live Music 12:00p.m. to 5:00 p.m. to Benefit John W. Toulan Memorial Ride/Walk**

Council President Bollin opened the Public Hearing for comments on a Noise Ordinance Variance request. There being no comments President Bollin closed the Public Hearing.

Councilor Costa made a motion, seconded by Councilor Arruda to grant the request for a Noise Ordinance Variance to Deborah Toulan, 69 Nanaquaket Road, for Live Music from 12:00 pm to 5:00 pm on July 31<sup>st</sup>. Motion passed unanimously.

**Planning Board - Zoning Ordinance Text Amendment Regarding New Article Titled “Wind Energy Conversion Facilities” – Letters and Comments from Residents**

President Bollin opened the Public Hearing for comments. Resident Henry Korzeniowski, representing 10-15 families in the Rim Rock Ct. area requested permission to do a slide show presentation. Mr. Korzeniowski is an abutter who would be directly affected by an Industrial size wind turbine. Not against wind power, just against it in a residential area, against locating a Wind Turbine Power Plant at Assessor's Map 1-12, Block 92 Lot 17. The proposed location is closer than 1000 ft to the nearest residence, more accurately 400 ft. The environmental impact would include installation of the turbine components by a large crane on narrow roads, impact the environment and have a large construction zone. Noise pollution is also a concern. Have to be more than a quarter mile away from the Portsmouth Abbey wind turbine before the sound it makes becomes inaudible. The turbine can also have a shadow flicker caused when the sun passes behind the rotor. The proposed safety setback is irresponsible. Safety risks include ice buildup, blade failure, tower failure/collapse and turbine fire. Asking the Council for consideration to place conservative setback rules for turbines. Want responsible guidelines, need 2.5 times the length of the blade.

Town Planner, Chris Spencer requested the Council continue this matter, needs more study on the implication of the ordinance. Garry Plunkett, a member of the East Bay Consortium also believed it would be beneficial to continue this. Shares the concerns about that specific project, relevant to the issues. One realtor said the ordinance was confusing and needed more work.

President Bollin closed the Public Hearing at this time.

Councilor Durfee agreed this should be continued, not comfortable, needs more structure. Councilor Lambert agreed

Councilor Lambert made a motion, seconded by Councilor Costa to send this proposed ordinance regarding Wind Energy Conversion Facilities back to the Planning Board for further consideration to setbacks and noise issues. Councilor Roderick questioned whether the continuance was to a date certain. President Bollin noted the Council could not dictate to the Planning Board, proper to readvertise for another Public Hearing as the proposed language may change.

Councilor Costa questioned extending the moratorium until an acceptable ordinance is adopted. Steve Hughes, Chairman of the Planning Board requested this be extended another 3 to 4 months.

Councilor Costa made a motion, that in conjunction with the motion to refer the request back to the Planning Board, the moratorium on the installation and construction of wind turbines and generators be extended until an ordinance is passed and adopted. Motion passed unanimously.

**President Bollin, with regards to an Ethics Advisory Opinion, recused himself and left the Council table.**

**Tiverton Yacht Club – Request Zoning Ordinance Text and Map Amendment**

**a. Recommendation of Planning Board**

**b. Response from Wastewater Management**

**c. Letters and Comments from Residents**

Council Vice-President Arruda opened the Public Hearing. Asked the large audience for indulgence and to sign a tablet with their name and address for the benefit of the stenographer. Mary Anne Escobar from Ledgewood Reporting was present for transcript of minutes. Town will use “Executive minutes” provided.

TOWN OF TIVERTON  
TIVERTON TOWN COUNCIL  
MINUTES

JUNE 14, 2010

Town Council Members present:

Donald Bollin, President (recused from this petition)  
Joanne Arruda, Vice President (presiding chairperson for meeting)  
Jay Lambert  
Edward Roderick  
Louise Durfee  
Cecil Leonard  
Hannibal Costa

Also present:

Jeanne Scott, Esquire  
Counsel for Tiverton Town Council

Nancy Mello – Clerk/secretary  
James Goncalo – Town Administrator

The hearing began at 8:09 p.m. Chairman Donald Bollin recused himself due to the fact he could not get an advisory opinion from the ethics commission on whether he should serve or not. Ms. Joanne Arruda took over the role as chairperson for this hearing.

Attorney Campbell wished to raise two issues before the meeting began. The first issue stated was he believes this is a defective application filed by a legal non-entity. Attorney Tremblay replied that there is no such application. The Tiverton Yacht Club is requesting to be placed on the Town Council agenda for a zoning change.

Attorney Scott stated that according to Article 14 of the Tiverton Code of Ordinance this hearing can continue.

The second issue raised by Attorney Campbell was the notice requirement. He stated that proper notice was not given, as the list has not been updated since 2008. Attorney Tremblay replied stating that they did use the 2008 list, and also went to the land evidence records to search for any transactions which occurred after that period of time and sent notice to those abutters as well.

Attorney Tremblay raised a few issues the Tiverton Yacht Club needs to get resolved in order to stay in existence. The Town re-zoned the two parcels of property which the club uses, one in a waterfront district zone which is the marina portion and one in an R40 zone which the building was located on. When the Town made that lot an R40, the Town said that yacht clubs could be permitted by a special use permit. The problem with that is when the ordinance was passed, the yacht club already existed, so the club is not there by a special use permit. It is there by a nonconforming use.

Another problem the Tiverton Yacht Club (hereinafter referred to as TYC) has been dealing with is a septic problem. A truck ran over their septic during the removal of debris after the fire. The club had to put in a new system. The neighbors complained stating that they needed a larger system. The club agreed to that, so they would make their neighbors happy. They put in a bigger system. The Court said no, that was an expansion of a nonconforming use.

They built a swimming pool in 1972 for which they used for members and also non-members for swimming lessons because of pollution in the Sakonnet River. The court now says that they can only use their pool for members only. The TYC has been giving swimming lessons for over 30 years and Mr. Tremblay explains how that was a valuable resource for the Town of Tiverton to have lost.

All these issues arose when the town re-zoned this property, which essentially put the TYC into nonconformance and this is why they need the zoning change so that the TYC can continue to exist and be an important part of this community.

Attorney Tremblay called the following six witnesses and elicited testimony in support of his proposed amendment change:

1. Wayne Karzenski, Commodore for the TYC, went into the history of the club and how the club originated. He explained how in 2003 the club was destroyed by fire. The TYC is currently asking for a building that is 1,320 square feet. This square footage is 26 percent less than the original house, and he states that still the neighbors are complaining it is too big. He explained that they have done everything they can to get along with the neighbors and get this project going, but yet they keep coming across one obstacle and another.

In addition to the issues cited by Attorney Tremblay, Mr. Karzenski stated that the club also is requesting that the town adopt the CRMC requirements for parking for the marina. He also stated that appearing before the zoning board of review for a special use permit for a septic issue that was already passed by DEP and CRMC is a waste of taxpayers' money and time.

2. Tonya Brainsky from Natural Resource Services appeared before the Council and explained the different types of water classifications. She stated there are different types of water classifications that you can have marinas and recreational facilities. They are type three, type four and type five waters. Currently the only areas in town that are designated are type three (designated in yellow on the diagram) and type five (designated as red on the diagram). She stated that the only place where you can have a marina spanning from Little Compton to Fall River is between the bridges and a little south of the bridges up to the Starwood Property. Ms. Brainsky stated that the Riverside Drive site was the best place to host a yacht club and marina related activities.
3. Richard Carrubba, real estate appraiser and broker, appeared before the Council and stated that the proposed amendment complies with the Tiverton Comprehensive Plan. He cited various sections of the comp plan and explained the reasoning for each.
4. Stuart Hardy appeared before the board stating that the proposed amendment is not only entirely consistent with the comprehensive community plan but in fact contributes to the implementation of specific goals and objectives in that plan.
5. Greg Jones, vice commodore of the TYC, appeared before the board and expressed his commitment to the yacht club and what troubles and issues the yacht club has been experiencing since the building burned down seven years ago. He requested the Council to accept these proposed changes to the amendment so that the yacht club can continue on. He stated that they will be fighting this in the courts for the next two to three years, but if this amendment does not pass, the TYC will eventually cease to exist. They cannot continue to exist as a nonconforming use as the obstacles for them are too great in that current status.
6. John Brady, member of TYC, stated he is the oldest member of the TYC. Mr. Brady stated that as he reviewed some of the old log books, there have been times where the TYC has had nearly 946 individuals. Currently the membership is half of that number. Mr. Brady expresses his fond memories of the club and how he feels that the TYC has been an asset to the community and it should be for many years to come.

Mr. Tremblay concluded presenting witnesses and the hearing was open for public statements. Many residents spoke in favor of this amendment change. There were a few members of the audience that were opposed to the amendment change.

Due to the lateness of the evening, Mr. Leonard made a motion to continue this matter to Monday, July 18. Ms. Durfee seconded. The Vote was 5-1 in favor. Mr. Roderick opposed the motion stating that the Council should pick a date which was sooner rather than later.

Whereupon the meeting concluded at 10:30 p.m.

TTC:mae

Council President Bollin returned to the Council Table at this time.

**TOWN ADMINISTRATOR ANNOUNCEMENTS, COMMENTS AND QUESTIONS**

1. A cell tower is being erected on Arruda Farm.
2. Rigid plastic drop off at the DPW on Saturday, June 19<sup>th</sup>, 8 to 1pm.
3. Four Fire Fighters will retire this month
4. Senior Center strawberry social June 25<sup>th</sup>. Call Center for time.
5. Sewer line roadway drainage line, to be repaired for \$65,000. Funds from TIF bond erosion account reimbursement.
6. Administrator needs to find \$1500 after FEMA for \$6000 bid award to J&A to fix (2) sink holes in drain line buy inland fuel.

**TOWN SOLICITOR, ANNOUNCEMENTS, COMMENTS AND QUESTIONS:**

Updated Council on litigation matters regarding Tiger Tree, there was a hearing for cross motions for summary judgment; Judge denied our request for a stay, not considered problem as the Town has enforcement ability to fine them which is considered adequate remedy of law. Tiger Tree also denied motion to stop our enforcement.

Solicitor going forward with court action.

**CLOSED EXECUTIVE SESSION:**

There was no Executive Session on the Agenda.

**ADJOURNMENT:**

Councilor Costa made a motion, seconded by Councilor Arruda to adjourn. Motion passed unanimously.

Council adjourned at approximately 10:35 p.m.

A True Copy.

ATTEST: \_\_\_\_\_  
Nancy L. Mello, Town Clerk